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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,624	06/26/2003	Shigeki Matsubara	KAS-185	4456
24956 7590 02/07/2007 MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			EXAMINER LEVKOVICH, NATALIA A	
			ART UNIT 1743	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/07/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/603,624

Applicant(s)

MATSUBARA ET AL

Examiner

Natalia Levkovich

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received..

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/09/2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura et al. (US 6080364) in view of Bender et al. (US 5576946).

With respect to claims 1-2, as was previously discussed, Mimura discloses an automatic analyzer comprising reaction vessels 46B, photometer 14b ['analysis part' – Ex.], computer 40 ['operating unit' – Ex.] and a display which shows an operation flow represented by a set of screens with classification captions ['boxes' – Ex.] corresponding to various operation steps, such as reagent management, reagent management, calibration, or quality control (see Abstract and Figure 3). "...When a state corresponding to one of a plurality of classification captions occurs ['time series' – Ex.], the display state of the corresponding classification caption is changed"-(Col.2, lines 35-40).

Within a particular operation step, for example, calibration, represented by a calibration screen shown in Figure 4, "display blocks 401 to 404...symbolizing ... a plurality of states of calibration... are displayed...When the analyzer status includes the event symbolized by the corresponding display block, the display state ['displaying manner' – Ex.] of each of the display blocks 401 to 404 as a classification caption is changed", for example, "display block 402 ... flickers when there is an analysis item whose calibration time interval has elapsed" (see Col.15, lines 5-40).

Mimura does not teach displaying all the operation steps 'required for starting up' the analyzer in a time series.

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Bender discloses a control system for "creating, modifying, initiating and controlling a manufacturing process ... using computer on-screen icons as metaphors for actual process steps... Other features provide on-screen execution and control of start-up, operation, alternative operation, suspended operation (park), shut-down, and servicing functions" (Abstract). The system further provides an "overview screen that displays for the operator the instantaneous status of all equipment, the current process variables in use, and the current location of the program in the overall program sequence" (Col.7, line 30). "When selected from the menu bar, the selected item "lights up" ...or otherwise changes to indicate selection" (Col.8, line 20). "The icons are arranged ... to appear in a chained sequence across the computer screen, connected by arrows designating the directional sequence of events. Preferably, when an icon is selected..., it is identified on the screen in the preferred embodiment by a contrasting color or other appropriate designator" (Col.8, line 35). Thus, the display "shows the operator the trends over time for each important process variable as the process proceeds. Further, it enables the operator to effect temporary changes in the process variable setpoints. (Col.10, lines 30-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured the display of the modified apparatus of Mimura in such a manner that all the operation steps 'required for starting up' the analyzer would be represented by icons / 'boxes' arranged in a time series, the icon representing a next executable operation step being identified on the screen by a contrasting color, in order

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to show the operator the trends over time, thus enabling the operator to effect temporary changes during the process.

Referring to claim 3, although Mimura discloses tracking an execution history for the calibration step only (Col 16, line 60) and does not teach the same for the step of maintenance, it would have been within the ordinary skill in the art at the time the invention was made to have configured the display of the modified apparatus of Mimura in such a manner that the execution history of the maintenance would be shown, and the icon which indicates the maintenance item to be executed would be displayed in a different color from other icons, in order to attract attention of the operator when operator's input is needed.

With respect to claim 4, Mimura does not disclose an operation step to be a step of clearing garbage data and a corresponding box changing its color when the above step is required. However, garbage collecting/clearing off is a well known, routine procedure used in numerous software packages. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured the display of the modified apparatus of Mimura in such a manner that the corresponding boxes would change the color, or caption, or flicker, in order to attract attention of the operator when operator's input for the step of data clearance is needed.

As to claims 5 and 7-8, although Mimura does teach reagent management, calibration' and 'quality control as operation steps, however, Mimura does not specify that when calibration' and 'quality control are needed, or a day before a reagent amount is expected to become insufficient, the corresponding box would change its color.

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However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured the display of the modified apparatus of Mimura in such a manner that the corresponding box would change the color, in order to attract attention of the operator when operator's input for the steps of the reagent management, calibration' and 'quality control is needed.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura in view of Koakutsu et al. (EP 0359049).

Although Mimura does disclose reagent management as an operation step, the reference does not specifically teach the steps of rinsing and priming the flow paths. However, the operations of rinsing / priming the containers and/or fluid communication means are routinely used in the art (see, for example, the Koakutsu reference, Col. 1, lines 25-40; Col.5, lines 10-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the steps of rinsing / priming of flow paths into the setup operation in the system of Mimura, in order to provide for accurate results of the analysis.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura in view of Kodosky et al. (US 4901221).

Mimura does not disclose a configuration display section showing configuration of the automated analysis system. Kodosky disclose a computer system having a display console for displaying images representing the configuration of the system and allowing the system control (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed symbolic representation of the

constituents of the automated analysis system of Mimura, with the symbol representing the element of the system involved in an on-going operational step being displayed differently from the remaining steps, in order to attract attention of the operator when operator's input is needed.

### ***Response to Arguments***

7. Applicant's arguments dated 11/09/2006 have been fully considered but they are not persuasive.

Applicant argues that 'Bender and Kodosky do not relate to an automatic analyzer and are non analogous art', and that there is no motivation to combine Mimura, Bender and Kodosky. Examiner notes that the determination whether a reference belongs to a non-analogous art, must be made not only as a result of comparing the fields of endeavor, but also on the grounds of whether or not the reference is reasonably pertinent to a particular problem. *In re Wood*, 202 USPQ 171, 174. The instant application is directed to an automatic analyzer comprising an 'operating unit for controlling operations' (including 'start -up') of the analyzer. Bender discloses a control system for "... modifying, initiating ['start-up' - Ex.] and controlling" an automatic process. Kodosky disclose a computer system having a display console for displaying images representing the configuration of the system and allowing the system control (see the discussion above). Thus, the references are drawn to solving the same problems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured the display of the modified apparatus of Mimura in such a



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manner that all the operation steps 'required for starting up' the analyzer would be represented by icons / 'boxes' arranged in a time series, the icon representing a next executable operation step being identified on the screen by a contrasting color, as disclosed by Bender, in order to show the operator the trends over time, thus enabling the operator to effect temporary changes during the process. It would have been also within the skills of an artisan at the time the invention was made to have employed symbolic representation of the constituents of the automated analysis system of Mimura, with the symbol representing the element of the system involved in an on-going operational step being displayed differently from the remaining steps, as disclosed by Kodosky, in order to attract attention of the operator when operator's input is needed.

As to the alleged hindsight, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based on upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, such a reconstruction is proper. *In re McLaughlin*, 443 F. 2d 1392; 170 USPQ 209 (CCPA 1971).

### ***Conclusion***


8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

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**FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

  
Jill Warden  
Supervisory Patent Examiner  
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